

Before the
Federal Communications Commission
Washington, D.C. 20554

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Federal Communications Commission
Office of Secretary

In the Matter of)
)
Advanced Television Systems)
and Their Impact Upon the) MM Docket No. 87-268
Existing Television Broadcast)
Service)

TO: The Commission

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**COMMENTS OF THE
ASSOCIATION FOR MAXIMUM SERVICE TELEVISION, INC.
ON THE DIGITAL TELEVISION STANDARD AGREEMENT**

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**COMMENTS OF THE
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ON THE DIGITAL TELEVISION STANDARD AGREEMENT**

The Commission has sought comment on a compromise reached by representatives of the broadcasting, equipment manufacturing, and computer industries on a transmission standard for advanced digital television ("DTV") (dated November 26, 1996 and released for comment on November 27, 1996) (the "Agreement"). These comments are submitted by the Association for Maximum Service Television, Inc. ("MSTV") on behalf of more than 300 local television stations nationwide. As discussed more fully below, MSTV supports the Agreement and the Commission's intention to act on the DTV transmission standard issues raised in the Fifth Further Notice of Proposed Rule Making ("Fifth NPRM" released in the above-captioned docket on May 20, 1996) by the end of this year.

MSTV welcomes the Agreement as a reasonable way to resolve the controversy over the Advanced Television Systems Committee's recommended DTV transmission standard ("ATSC DTV Standard") so that the public can begin to receive

DTV transmissions in the short term. Although MSTV believes that the Commission's own proposal to adopt the ATSC DTV Standard in its entirety would have best served the public interest by speeding the transition to DTV, the Agreement presents an acceptable alternative that avoids the twin perils of delay and extreme uncertainty. By incorporating most aspects of the ATSC DTV Standard into the Commission's Rules, while relying on a voluntary industry standard for the specific video formats, the Agreement is a workable compromise that the Commission should accept.

I. BACKGROUND

With the release of the Fifth NPRM in May 1996, it appeared that the long journey toward adoption of a DTV transmission standard was at last ending. The nine year long process of the Advisory Committee on Advanced Television ("ACATS") had completed with ACATS' recommendation that the Commission adopt the ATSC DTV Standard.^{1/} This standard was developed through intensive laboratory testing of competing DTV system proponents; it was documented in open fora involving over one thousand individuals, including representatives of the broadcasting, program producing, equipment manufacturing, academic, motion picture and computer communities as well as the Commission.^{2/} The product was a protocol for "a remarkable system that is capable and flexible well beyond the expectations of a few short years ago"; a transmission standard flexible enough to accommodate all presently contemplated

^{1/} ACATS recommended adoption of the ATSC DTV Standard in its Advisory Committee Final Report and Recommendation, Federal Communications Commission Advisory Committee on Advanced Television Service, November 28, 1995 ("ACATS Report").

^{2/} See Fifth NPRM, at 3.

applications and formats and supply enough to support future innovations.^{3/}

Recognizing these virtues and the importance of setting a transmission standard to facilitate the roll-out of DTV, the Commission proposed to adopt the ATSC Standard in full.^{4/}

Broadcasters,^{5/} consumer equipment manufacturers^{6/} and retailers,^{7/} motion picture industry representatives,^{8/} broadcast engineers,^{9/} the ATSC^{10/} and the Advanced Television Technology Center^{11/} supported Commission adoption of the ATSC DTV Standard to lay the groundwork for a successful transition to DTV.

^{3/} Id. at 18. See also, Joint Broadcaster Comments to the Fifth NPRM (July 11, 1996), at 6-15.

^{4/} See Fifth NPRM, at 15.

^{5/} See Joint Broadcaster Comments.

^{6/} See, e.g., Comments of the Digital HDTV Grand Alliance; Electronic Industries Association, at 6-8; General Instrument Corporation, at 2-4; Hitachi America, Ltd., at 3; Matsuhita Electric Corporation, at 2; Mitsubishi Consumer Electronics America, Inc., at 1-3; Philips Electronics North America Corporation, at 1-8; Sony Electronics, Inc., at 8-11; Thomson Consumer Electronics, at 4-5; and Zenith Electronics Corporation, at 2-5.

^{7/} See, e.g., Comments of Circuit City Stores, Inc., at 6.

^{8/} See, e.g., Comments of the Motion Picture Association of America and Universal City Studios.

^{9/} See Comments of Association of Federal Communications Consulting Engineers, at 2; Cohen, Dippel and Everist, T.C., at 4-5; Hammett & Edison, Inc., at 1.

^{10/} See Comments of the ATSC, at 2-10.

^{11/} See Comments of ATTC, at 2-4.

However, representatives of the cable industry,^{12/} the computer industry,^{13/} and a segment of the film industry^{14/} objected to adoption of the ATSC DTV Standard.

In reply comments in August 1996, MSTV argued that the concerns of those opposed to the Fifth NPRM's proposal were small relative to the powerful need for a DTV transmission standard, particularly one as fine as the ATSC DTV Standard.^{15/} We and others pointed out that the ATSC DTV Standard, containing both progressive and interlaced scan formats and designed to be computer friendly, fostered compatibility and convergence between the television and computer industries for the benefit of consumers. At the same time, we emphasized that the Commission must focus on the primary goal of this proceeding -- an efficient transition to DTV -- and resist the tug of tangential and often anticompetitive concerns.

II. THE CALL FOR FURTHER PROPOSALS

By October 1996, two months after the close of the comment period on the DTV standard, it had become clear that opposition by some in the computer and motion picture industries to FCC adoption of the ATSC DTV Standard threatened to waylay the entire DTV project. Broadcasters began to reach out to representatives of the computer and motion picture industries to remove the obstacles to the transition. At about the same time, Commissioner Ness sent a letter to representatives of the broadcasting, equipment manufacturing, computer, and motion picture industries urging

^{12/} See Comments of the National Cable Television Association, at 13 n.20; see also Comments of Tele-Communications, Inc., at 20.

^{13/} See, e.g., Comments of the Computer Industry Coalition on Advanced Television Service, the Business Software Alliance, and Microsoft Corporation.

^{14/} See Comments of the Coalition of Film Makers.

^{15/} See Reply Comments of MSTV to the Fifth NPRM (August 12, 1996).

them to recommend a solution to their differences on the DTV standard by Thanksgiving.^{16/} The Chairman's office and the Commerce Department had issued similar calls for the involved industries to engage in discussions intended to reach a compromise.

It was clear from the responses to Commissioner Ness' challenge that the involved parties were not prepared to formulate new positions. Rather, they would discuss the issues that had been set forth in the Fifth NPRM and their publicly filed responses thereto. For example, the Motion Picture Association of America wrote to Commissioner Ness to correct "the misimpression that all of the Hollywood community oppose the 16:9 aspect ratio. To the contrary, . . . [the] 16:9 aspect ratio has been proven through the Advisory Committee process to be an appropriate standard."^{17/} Although also maintaining their support for adoption of the entire ATSC DTV Standard, broadcasters expressed a willingness to work towards the Thanksgiving deadline.^{18/} Likewise, computer industry representatives maintained their positions reflected in the docket, but also appeared willing to talk with broadcasters and receiver manufacturers to avoid further stalemate on the standard issues.^{19/} The agenda for such talks was clearly set forth in the Fifth NPRM. That Notice, although proposing adoption of the entire

^{16/} See Letter of Commissioner Ness to industry representatives (October 24, 1996).

^{17/} Letter from Jack Valenti, Chairman of MPAA, to Commissioner Ness (November 12, 1996).

^{18/} The Broadcasters Caucus (consisting of representatives from all television networks and industry organizations) released a statement committing itself "to bringing this nine-year process to an end and implementing the transition to digital." Broadcasters Caucus Press Release (October 25, 1996).

^{19/} Intel wrote to Commissioner Ness that "delay would not serve the best interests of American consumers or any of the industries involved." Letter from Paul E. Misener, Manager, Telecommunications and Computer Technology Policy, Intel (October 25, 1996).

ATSC DTV Standard, also proposed alternatives. Specifically, the Fifth NPRM (at 18) sought comment "on requiring use of some layers of the ATSC DTV Standard . . . but making others optional." Thus, this option had already been commented upon publicly before the parties met to formulate the Agreement.

* * *

In light of the above, the concerns of William F. Schreiber expressed in his December 5 comments in this matter are unfounded. The meeting of industry groups to discuss the DTV standard issue does not constitute the creation of a federal advisory committee that should be governed by the Federal Advisory Committee Act. The industry representatives did not meet under the government's aegis and do not purport to advise the Commission in any other capacity than as members of the public. The outcome of the inter-industry meetings merely constitutes another comment to the Commission -- indeed a comment that is already reflected in the public record.^{20/} Because the Commission has put the Agreement out for comment, the public interest can be fully considered. That the comment period is relatively short is not troubling. These issues have been fully vetted in the Fifth NPRM comment period and, further, in numerous *ex parte* comments filed in the docket. Additional time should not be necessary to formulate positions on the Agreement.

III. THE INTER-INDUSTRY SUBMISSION

Representatives of the Broadcasters Caucus, Computer Industry Coalition on Advanced Television Service ("CICATS"), the Consumer Equipment Manufacturers

^{20/} See, e.g., Comments of CICATS, at 16 (not opposing "adoption of the proposed non-video format components") and Compaq, at 15 (not objecting "to incorporation of four of the five major components of the ACATS standard.").

Association and the Coalition of Film Makers met in more than six days of meetings and held numerous bilateral discussions. The last meetings were held in the waning days before the deadline for as many as 12 hours at a stretch. The process only crystallized what was evident from computer and film industry filings and other public statements -- that broadcasters had a choice of two courses.

One was stalemate. From their filings, it appeared that computer industry (and to a lesser extent, film industry) representatives insisted on outlawing the 1080-I format and permitting only progressive scan technologies. Although the ATSC DTV Standard specified mostly progressive scan formats and broadcasters supported the development of progressive scan technology capable of delivering HDTV (a 1080-P-60 format), they recognized that in the near term, only 1080-I could support full HDTV. Thus, with one side dead-set against, and the other side insisting on, FCC adoption of a standard with both interlaced and progressive picture formats, the result would have been delay and uncertainty and their likely crippling effects.

The second approach, reflected in the Agreement, was for both sides to give a little. Essentially, the solution was for the FCC to adopt the ATSC DTV Standard except for the video format constraints, as the Fifth NPRM had raised as an alternative. This approach is less unsettling to the market and poses less risk of denying the American public the benefits of DTV (in both progressive and interlaced formats) than would a stalemate. Because many experts believe that 1080-I can serve as a base layer for 1080-P and because even if this is not the case, there will be strong market incentives to assure backward compatibility, the Agreement will permit the compatible development of progressive technologies as (i) broadcasters desire, (ii) the public interest supports and (iii) the ATSC DTV Standard encourages.

Partial adoption of the ATSC DTV Standard, although not as desirable as full adoption, leaves far less uncertainty than alternative approaches and satisfactorily ends the delay in the DTV standard-setting process. The Agreement lays the ground for broadcasters, manufacturers, and consumers to move rapidly to DTV and we believe all interested parties should support it.

III. MOVING FORWARD

We urge the Commission to act on the Agreement by the end of the year, notwithstanding what scattered opposition may arise.^{21/} For example, the Coalition of Film Makers has contended that its interests with respect to the broadcast of films in their original aspect ratio have not been accommodated.^{22/} This fragment of the movie industry that opposed adoption of the ATSC DTV Standard argued that a "mandated" 16:9 aspect would impair the display of some wide-screen films.^{23/} The Agreement obviates that concern by doing away with any mandated aspect ratio. Even to the extent that the 16:9 aspect ratio is selected voluntarily, the fact that it is 33% wider than the current television aspect ratio reduces (if not eliminates) the need to use the "pan and scan" technique to tailor films to the television screen. Some cinematographers have insisted that the government take the radical step of prohibiting freely negotiated

^{21/} Since various computer industry representatives filed comments and reply comments urging the FCC not to adopt the picture format layer of the ATSC DTV Standard, opportunity for public comment has already been provided.

^{22/} See Letter from Larry Chernikoff to Commissioner Ness (November 26, 1996); letter from the American Society of Cinematographers to Vice President Gore (November 26, 1996).

^{23/} See Comments of the Coalition of Film Makers (July 11, 1996); Letter of Steven Poster, First Vice President, American Society of Cinematographers to Commissioner Quello (June 5, 1996); Letter of Gene Reynolds, President, Directors Guild of America to Chairman Hundt (May 2, 1996).

agreements to use the pan and scan technique.^{24/} As the Broadcasters Caucus states in the attached release, the FCC lacks both cause and authority to impose such a restraint on the freedom of contract.

The exclusion of the ATSC DTV Standard's picture format layer from the Commission's rules effectively neutralizes the Coalition of Film Makers' concern and the Commission can do nothing more legitimately to accommodate the desires of this industry fragment.^{25/} This segment's continued resistance to the consensus so hard won by the computer, broadcasting and equipment manufacturing industries should not be permitted to slow delivery of DTV to the public -- a development that will greatly benefit the interest in having films televised in their native aspect ratio.

The Commission should now adopt the ATSC DTV Standard in accordance with the Agreement. With this piece in place, the Commission should move expeditiously to adopt a DTV allotment/assignment table and DTV channel adjustment process as advanced in the Joint Broadcaster Comments to the Sixth Further Notice of Proposed Rulemaking. The Commission should also swiftly resolve the issues raised in

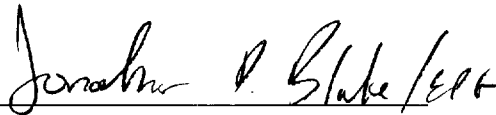
^{24/} See Letter of the American Society of Cinematographers to Vice President Gore (November 26, 1996).

^{25/} The only other party reported to have opposed the Agreement is a representative of the low power television community. See Communications Daily, at 7 (December 3, 1996) (reporting that the International Broadcasting Network opposed the Agreement because low power interests were not represented). Although the Commission should attempt to accommodate low power and translator stations to the extent practicable in assigning DTV channels, it should not delay settling the DTV standard issue. The picture layer -- the focus of the controversy on the DTV standard -- has no bearing on how low power stations are accommodated in the DTV allotment/assignment table.

the Fourth Further Notice of Proposed Rulemaking and proceed to issuing DTV licenses by early Spring, as the Congressional leadership has urged.^{26/}

Respectfully submitted,

ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.

A handwritten signature in cursive script, appearing to read "Jonathan D. Blake / etc".

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Its Attorneys

December 6, 1996

^{26/} See Letter from Representatives Gingrich, Bliley, and Dingell and Senators Lott and Hollings to Chairman Hundt (June 19, 1996).

December 6, 1996

RESPONSE TO CINEMATOGRAPHERS' NOVEMBER 26 FAX
TO VICE PRESIDENT GORE CONCERNING DTV STANDARD

The American Society of Cinematographers have it almost all wrong in their November 26 Fax to you concerning the proposed FCC DTV standard and the agreement reached among broadcasters, computer representatives and TV set manufacturers.

1. The Cinematographers asked the FCC to take two steps with respect to the proposed DTV standard: (a) non-adoption by the FCC of the proposed aspect ratios and (b) a ban on the right of film owners and television broadcasters to bargain at arm's length as to the aspect ratio in which theatrical film is shown on television. Since the agreement fully accomplishes the first of these two goals sought by the Cinematographers, it is simply inaccurate for them to claim that the agreement does "not provide for redress" of their grievances.

2. The advent of digital TV and its wider aspect ratio effectively addresses the Cinematographers' second complaint because it will greatly reduce the circumstances that lead to the use of pan and scan. Yet, Cinematographers' continuing opposition to the standard could impede the digital roll-out and delay this benefit that will serve their interests.

3. Broadcasters, however, cannot and will not invite the federal government to abridge the freedom of contract by inviting the FCC to adopt a requirement prohibiting film rights holders and broadcasters from determining whether the pan and scan technique (usually implemented by film suppliers, not broadcasters) will be used for televising films -- an area where the FCC has no jurisdiction. Perhaps such a step would be "relatively simple," as the Cinematographers claim, but it would also be simply wrong.

The interests of the Hollywood community will be greatly abetted by the FCC's permitting digital TV to launch promptly by adopting the DTV standard as recommended in the settlement among broadcasters, computer representatives and TV set manufacturers. (The Motion Picture Association of America takes a different view from the Cinematographers; see the enclosed November 12, 1996, letter from Mr. Jack Valenti to Commissioner Ness: "The 16:9 screen aspect ratio contained in the ATSC Standard will provide maximum accommodation for the transmission of video material originally produced in different aspect ratios and will facilitate international program

exchange.") The public interest would also be greatly served by prompt adoption of this standard.

THE BROADCASTERS CAUCUS

ABC, INC.

FOX TELEVISION STATIONS, INC.

ASSOCIATION FOR MAXIMUM
SERVICE TELEVISION, INC.

NATIONAL ASSOCIATION OF
BROADCASTERS

ASSOCIATION OF AMERICA'S
PUBLIC TELEVISION STATIONS

NATIONAL BROADCASTING
COMPANY, INC.

ASSOCIATION OF LOCAL
TELEVISION STATIONS, INC.

PUBLIC BROADCASTING SERVICE

CBS INC.

TRIBUNE BROADCASTING COMPANY

CHRIS CRAFT INDUSTRIES, INC.

Its Members

Enclosure

cc: The Honorable Larry Irving (with enclosure)